

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2454-CR

Cir. Ct. No. 2014CF52

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN L. ALWIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pierce County:
JAMES J. DUVALL, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. John Alwin appeals a judgment, entered upon his guilty pleas, convicting him of possessing methamphetamine and possessing THC. Alwin argues the circuit court erred by denying his motion to suppress evidence

seized during the execution of what Alwin argues was an invalid search warrant. We reject Alwin's argument and affirm the judgment.

BACKGROUND

¶2 The State charged Alwin with possessing methamphetamine, possessing drug paraphernalia, and possessing THC, the last count as a second or subsequent offense. The charges were based on evidence seized during the execution of a search warrant at Alwin's home. Alwin moved to suppress the evidence, claiming the supporting affidavit did not provide probable cause for issuing the warrant. Alwin's motion was denied after a hearing.

¶3 In exchange for his guilty pleas to possessing methamphetamine and an amended count of possessing THC without the "second or subsequent offense" enhancer, the State agreed to dismiss the remaining count outright and recommend a sentence not exceeding the recommendation of the presentence investigation report. The circuit court ultimately sentenced Alwin to six months in jail on the possession of THC charge and imposed a consecutive three-year probation term on the possession of methamphetamine charge. This appeal follows.

DISCUSSION

¶4 Alwin argues the circuit court erred by denying his motion to suppress evidence seized during execution of the search warrant, claiming the warrant was not supported by probable cause. When reviewing whether probable cause existed for the issuance of a search warrant, we are confined to the record that was before the warrant-issuing commissioner. *State v. Kerr*, 181 Wis. 2d 372, 378, 511 N.W.2d 586 (1994). We must determine whether the commissioner who issued the warrant was "apprised of sufficient facts to excite an honest belief in a

reasonable mind that the objects sought are linked with the commission of a crime, and that they will be found in the place to be searched.” *Id.* (quoting *State v. Starke*, 81 Wis. 2d 399, 408, 260 N.W.2d 739 (1978)).

¶5 The evidence necessary to establish probable cause to issue a search warrant is less than that required to support a bindover following a preliminary examination. *Kerr*, 181 Wis. 2d at 379. The task of the warrant-issuing commissioner “is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit ..., including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1982)). Great deference should be given to the warrant-issuing commissioner’s determination of probable cause. *Id.* The commissioner’s determination will stand unless the party challenging the warrant proves the facts are “clearly insufficient to support a finding of probable cause.” *State v. Romero*, 2009 WI 32, ¶18, 317 Wis. 2d 12, 765 N.W.2d 756. “Doubtful or marginal” cases should be resolved in favor of the warrant. See *State v. Higginbotham*, 162 Wis. 2d 978, 990, 471 N.W.2d 24 (1991).

¶6 The supporting affidavit from investigator John Wilson provided, in relevant part:

Your affiant is an investigator with the River Falls Police Department. He has been assigned to this position since 2000. He is also part of the St. Croix Valley Drug Task Force.

On Wednesday December 5, 2013, your affiant along with Investigator James Haefner of the St. Croix County Sheriff’s Office met with Tanner Anthony Williamson ... at the River Falls Police Department about illegal drug activity going on in the City of River Falls.

Mr. Williamson stated that over the course of the last three months he has purchased methamphetamine from John Alwin in the City of River Falls over 20 times. Mr. Williamson stated that when he purchases methamphetamine from John Alwin he usually purchases a teener. Your affiant is aware that a teener of methamphetamine usually weighs around 1.77 grams. Mr. Williamson stated that he usually spends \$100 on a teener of methamphetamine from Alwin.

Mr. Williamson stated that Alwin is a user of methamphetamine.

Mr. Williamson explained that Alwin lives in Cudd's Trailer Court. Your affiant is aware that Alwin resides at 1450 S. Wasson Lane, Trailer 88, City of River Falls, County of Pierce, State of Wisconsin.

Mr. Williamson went on to say to your affiant that he saw Alwin on Wednesday December 5, 2013. Alwin stated to Mr. Williamson that he was going to pick up two 8-balls of methamphetamine from an unknown source. Your affiant knows that one 8-ball of methamphetamine usually contains approximately 3.5 grams of methamphetamine.

Mr. Williams explained to your affiant that he was over at Alwin's trailer approximately one month ago and noticed what he explained as a couple ounces of methamphetamine on the coffee table in the residence. Mr. Williamson also explained that Alwin has a lot of foot traffic in and out of the trailer for the purchase and or use of methamphetamine.

Your affiant is also aware that John Alwin has been charged and convicted of possession of methamphetamine in the past in Pierce County (09CF65).

Your affiant is requesting that a search warrant be issued for Alwin's residence.

¶7 Alwin argues the search warrant affidavit failed to establish probable cause to believe evidence of a crime would be found at Alwin's residence. As an initial matter, Alwin contends the affidavit does not establish Williamson's veracity, as it reveals little about Williamson or why he should be believed. Alwin, however, acknowledges that statements made against one's penal interest may establish an informant's veracity when those statements are made "under

circumstances providing the declarant with no apparent motive to speak dishonestly.” *Romero*, 317 Wis. 2d 12, ¶36. Here, Williamson provided his name and implicated himself in illegal activity, specifying that he had purchased methamphetamine “over 20 times” during “the course of the last three months,” and providing detail about the amount and cost of methamphetamine he purportedly purchased from Alwin.

¶8 Along with his personal observations of Alwin selling methamphetamine, Williamson told police Alwin lived in Cudd’s Trailer Court and police corroborated that information with a specific address. Williamson also indicated Alwin was a methamphetamine user and had a lot of “foot traffic” in and out of his trailer for the purchase and or use of methamphetamine. Williamson also alleged that he had seen a significant amount of methamphetamine in Alwin’s trailer about one month earlier. Alwin’s prior conviction for methamphetamine possession corroborates Williamson’s statements about Alwin’s methamphetamine use.

¶9 Alwin nevertheless argues that the “conclusory” and “stale” information provided by Williamson failed to establish a sufficient nexus between the residence and Alwin’s alleged drug activities. We disagree. As noted above, Williamson alleged that “over the course of the last three months” he made over twenty methamphetamine purchases from Alwin in the City of River Falls. Although Williamson did not specify the dates or locations of these purchases, this three-month period was not so remote in time that it did not support probable cause to believe Alwin was regularly selling methamphetamine. Further, on the same day police applied for the warrant, Alwin told Williamson he was “going to pick up two 8-balls of methamphetamine.” This information, combined with Williamson’s personal observations regarding Alwin selling methamphetamine

and having methamphetamine in his trailer in the recent past, supports the reasonable inference that Alwin would bring the methamphetamine to his trailer.

¶10 As the circuit court noted in properly denying Alwin's suppression motion:

We have established a pattern of meth sales, a large number of sales, that meth was linked to the residence. The fact [Williamson] was familiar with the residence and had been to the residence, and that there was discussion of imminent drug transaction [provides] a reasonable inference which an issuing magistrate may draw upon to establish probable cause to believe the nexus existed between items sought and the place to be searched.

The warrant affidavit, and the reasonable inferences drawn therefrom, provided probable cause to believe methamphetamine would be found at Alwin's residence.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

